

1 THE HONORABLE BARBARA J. ROTHSTEIN
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON

9 THE TULALIP TRIBES and THE
10 CONSOLIDATED BOROUGH OF QUIL CEDA
11 VILLAGE, Plaintiffs,

12 NO. 15-CV-940 BJR

13 THE UNITED STATES OF AMERICA,
14 Plaintiff-Intervenor,

15 ORDER DENYING PLAINTIFFS'
16 MOTION FOR RELIEF FROM
17 DEADLINE AND FOR STAY OF
18 TAXATION OF COSTS

19 v.
20
21 THE STATE OF WASHINGTON, *et al.*,
22 Defendants

23 **I. INTRODUCTION**

24 Plaintiffs The Tulalip Tribes and The Consolidated Borough of Quil Ceda Village, and
25 Plaintiff-Intervenor the United States (collectively, "Plaintiffs") have brought this matter
before the Court on a Motion for Relief from Deadline and for Stay of Taxation of Costs
("Motion for Relief"). The Motion for Relief seeks a stay of briefing and a stay on a ruling on
motions for costs filed by The State of Washington Defendants and Snohomish County
Defendants (collectively, "Defendants"). Having reviewed the briefs filed in support of and
opposition to the Motion for Relief, the Court finds and rules as follows.

26 **II. BACKGROUND**

27 The Court held a bench trial in this matter from May 14 to May 23, 2018. On October
28 4, 2018, the Court issued its Memorandum Opinion, which found "in favor of all Defendants
29 on all claims" and dismissed this case. Dkt No. 258. Judgment was entered on October 22,
30 2018.

1 On November 9, 2018, the Snohomish County Defendants filed a Motion for Costs and
2 Attorney's Fees, and on November 13, 2018, the State Defendants filed a Motion for Costs
3 (collectively, "Motions for Costs"). Pursuant to LCR 54(d)(3), both motions were referred to
4 Deputy in Charge Joe Whiteley for consideration.

5 Rather than respond directly to the merits of the Motions for Costs, Plaintiffs filed, on
6 November 21, 2018, a Motion for Relief from Deadline and for Stay of Defendants' Motions
7 for Costs and Attorneys' Fees.

8 III. DISCUSSION

9 As the parties agree, this Court has broad discretion to manage the proceedings before
10 it, including the briefing schedule and a ruling on a post-trial motion for a bill of costs. *See*,
11 *e.g.*, *Lasic v. Moreno*, No. 2:05-CV-0161-MCE-DAD, 2007 WL 4180655, at *1 (E.D. Cal.
12 Nov. 21, 2007)(“It is within the Court’s discretion to proceed or defer the taxation of costs
while an appeal on the merits is pending.”).

13 Plaintiffs rely on two primary grounds for relief from the deadlines associated with
14 Defendants' Motions for Costs. First, they claim that a stay of briefing and a ruling on the
15 Motions for Costs is in the interests of the economy of the parties and this Court. They claim
16 that consideration of the Motions for Costs at this time would create the potential for
17 unnecessary briefing and a “piecemeal” approach to costs in this case. But this is always true
18 where the prevailing party seeks costs after trial and the losing party seeks appellate review,
19 and the rules nevertheless provide for a standard procedure for seeking costs at this stage of
20 litigation. Plaintiffs have not demonstrated that any unusual circumstances call for a non-
standard approach to costs in this particular case.

21 Furthermore, the inefficiency of redundant or unnecessary briefing will only
22 materialize if Plaintiffs prevail in an appeal. A reversal or modification of this Court’s decision
23 might require a vacating of a costs bill. Conversely, however, if the Ninth Circuit affirms this
24 Court’s decision, ruling on the Motions for Costs now would spare the parties from having to
25 brief, and this Court from having to resolve, the issue of costs potentially years in the future,
when witnesses may have become unavailable and memories, faded. The piecemeal argument,
depending as it does on the outcome of an appeal, does little to support Plaintiffs’ motion. Nor

1 have Plaintiffs established, or even claimed, that consideration on the Motions for Costs would
2 delay or complicate an appeal.

3 Even if the Court were to credit the alleged risk of inefficiency, such risk is outweighed
4 by countervailing interests presented by the Motions for Costs. The appeal process, as the
5 parties are aware, can be lengthy. In the meantime, the citizens of Washington and Snohomish
6 County would be denied the full measure of benefits of the judgment in Defendants' favor.
7 Plaintiffs have failed to demonstrate that extraordinary, or even unusual, circumstances exist
that would justify a stay of taxing costs in this matter.

8 Finally, Plaintiffs claim that the parties and the Court would benefit from additional
9 time for briefing, but fail to articulate why such time is necessary in this particular case. In
10 acknowledgement of the complexity of this case, and the fact that the costs bill briefing
spanned the Thanksgiving holiday, the Court hereby grants Plaintiffs one additional week to
11 file a response than it would otherwise have had under the local rules. More than this, no
12 additional time is justified or granted.

13 IV. CONCLUSION

14 For the foregoing reasons, the Motion for Relief from Deadline is hereby DENIED.
15 The deadline for Plaintiffs to file a response to the Motions for Costs appears to have passed.
16 Rather than deem the Motions for Costs unopposed, however, the Court hereby directs
17 Plaintiffs to file any response to the Motions on or before December 14, 2018. Defendants
shall file any replies on or before December 21, 2018.

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19 So ordered this 6th day of December, 2018.

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23 Barbara Jacobs Rothstein
U.S. District Court Judge
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